

No. 06-16572

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

IN RE: GRAND JURY SUBPOENA,
DATED JULY 19, 2006.

GREG FRANCIS ANDERSON,

Witness -Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

On Appeal from an Order of Civil Contempt of the
U.S. District Court for the Northern District of California
Honorable William H. Alsup

**APPELLANT'S MOTION FOR ORDER
RELEASING DEFENDANT FROM CONFINEMENT**

IMMEDIATE ACTION REQUESTED

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On September 28, 2005, this Court issued a memorandum order stating that the record below contained insufficient evidence to support the District Court's order confining Greg Anderson, and ordering the action remanded to the District Court for further factual findings. This Court's order, however, did not instruct the United States Bureau of Prisons to release Mr. Anderson. Mr. Anderson's continued confinement is without legal authority, and violates 18 United States Code section 1826(b). Accordingly, this Court must issue an order releasing Mr. Anderson.

This Court's ruling of September 28 did not dispose of Mr. Anderson's appeal within 30 days as required by 18 U.S.C. § 1826(b). That section requires:

Any appeal from an order of confinement under this section shall be disposed of as soon as practicable, but not later than thirty days from the filing of such appeal.

The 30-day time limitation protects witnesses from extended incarceration under erroneous district court orders. As explained in *In re Grand Jury Proceedings*, 776 F.2d 1099, 1101 (2nd Cir 1985), "[t]he effect of Section 1826(b) ... is that, once an appeal has been filed, it prohibits the incarceration of a contemnor for a period of more than thirty days unless of course the order of incarceration is affirmed within that time."

Unless the appeal is entirely resolved within thirty days, the witness must be released. As explained in *Melickian v. United States*, 547 F.2d 416, 419-20 (8th Cir. 1997):

[W]hen decision is impossible or unadvisable within the thirty-day period, the procedure followed by this Court which releases the contemnor pending disposition best reconciles the various interests bound up in the bail issue. The policy of the statute is upheld in that the contemnor is released until his appeal is decided. The court retains the necessary flexibility to assure a fair and complete consideration of the issues. Most importantly, the coercive pressure of the contempt order is not completely lost, even though the contemnor is released pending disposition, because the threat and the actuality of re-incarceration still loom on the horizon.

Ninth Circuit precedent acknowledges this point of law, *see In re Federal Grand Jury Witness*, 597 F.2d 1166, at 1168 (9th Cir. 1979), and *Charleston v. United States*, 444 F.2d 504, at 506 (9th Cir. 1971).

Here, Mr. Anderson filed his Notice of Appeal on August 29, 2006. The

30-day period passed yesterday. The District Court's order has not been affirmed; to the contrary, it has been found to be without sufficient evidentiary basis. Mr. Anderson's continued confinement violates section 1826(b).

More importantly, Mr. Anderson's appeal has not been disposed of as required by section 1826(b).

Accordingly, this Court must order Mr. Anderson's release.

Dated: September 29, 2006

Respectfully submitted,

GERAGOS & GERAGOS
A Professional Corporation

By: 

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